

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

AMERICAN LINE BUILDERS JOINT APPRENTICESHIP  
AND TRAINING COMMITTEE D/B/A ALBAT <sup>1/</sup>

Employer

and

Case 9-RC-17473

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 648,  
AFL-CIO-CLC <sup>2/</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, <sup>3/</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1/</sup> The Employer's name appears as amended at the hearing.

<sup>2/</sup> The Petitioner's name appears as amended at the hearing.

<sup>3/</sup> The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a nonprofit trust, is engaged in the operation of a joint labor management apprenticeship training program at several locations in the United States, including its main office at Medway, Ohio, the only facility involved in this proceeding. The Employer employs four employees at its Medway, Ohio office in the unit found appropriate.

The Petitioner seeks to represent a unit of office clerical employees and full-time instructors employed at the Medway facility. The parties are in substantial agreement, and I find, that the unit sought is appropriate for purposes of collective bargaining. However, contrary to the Petitioner, the Employer would exclude Connie Jenkins, office manager, from the unit on the basis that she is a supervisor and/or a confidential employee. Jenkins' status is the only issue raised by either party in this proceeding.

For the reasons set forth below, I conclude that Jenkins is a supervisor within the meaning of Section 2(11) of the Act and I shall, therefore, exclude her from the unit.

The Employer's governing body is a board of trustees consisting of eight members, four of whom are appointed by the National Electrical Contractors Association, a multi-employer bargaining group herein called NECA, and four are appointed by the International Brotherhood of Electrical Workers, herein called the International Union. The Employer's board of trustees appoints a training director who serves as its chief executive officer. Alfred Pelletier, the current training director, works at the Medway facility with overall supervisory authority over the unit employees.<sup>4/</sup>

Alfred Miller, who works at Medway, is the Employer's assistant director/training coordinator reporting directly to Pelletier. Miller supervises the two full-time instructors who work at Medway and who are responsible for conducting 3-week training sessions for apprentices. The parties agree that the full-time instructors should be included in the unit. Miller also supervises about 35 or 38 part-time instructors whose primary employment is with electrical contractors. The part-time instructors conduct Saturday training sessions for apprentices away from the Medway facility. The parties agree that the part-time instructors are properly excluded from the unit.

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<sup>4/</sup> The Petitioner is an affiliate of the International Union. Pursuant to the International Union's constitution and by-laws, it must approve all collective-bargaining agreements negotiated by the Petitioner. At the hearing, the hearing officer raised a question as to whether the Petitioner's relationship with the Employer, by virtue of the Petitioner's affiliation with the International Union, might constitute a conflict of interest which would disqualify the Petitioner from representing the employees sought in the petition. Because the International Union does not control the selection of a majority of the Employer's board of trustees, I conclude that the Petitioner does not have a conflict of interest which would disqualify it from representing the employees in the unit. *Child Day Care Center*, 252 NLRB 1177 (1980).

Connie Jenkins is the Employer's office manager at Medway. Jenkins reports directly to Pelletier, and as part of her duties, Jenkins supervises a full-time clerk typist and a full-time bookkeeper. The parties agree that the clerk typist and bookkeeper should be included in the unit. However, as previously noted, they disagree as to whether Jenkins should be included. The Employer has previously employed persons in a part-time clerk position at the Medway office but that position, although shown on its organization chart under Jenkins' supervision, has been vacant since October 27, 1999.

Jenkins' job description for the office manager position indicates that she is responsible for supervision of the office staff, hiring of new office personnel and distribution of work among the office employees. An office manager position analysis dated January 24, 2000 was completed by Jenkins indicating that she chooses new hires for office staff from resumes submitted by applicants. Jenkins also prioritizes the work load and redistributes work among the shop as needed by deciding which tasks blend well with each employee and the tasks such employees are presently performing. Pelletier testified that these documents accurately reflect Jenkins' job functions.

On February 25, 1998, Jenkins hired Shannon Kidwell as a part-time clerk and on July 12, 1999, she hired Angel Moody into that same position. The record does not establish that Jenkins has independent authority or effective recommendation with respect to augmenting the Employer's office staff. However, once approval is obtained to hire a part-time clerk, Jenkins independently recruits, interviews and hires applicants for that position in the absence of any consultation with Pelletier. Pelletier does not speak with the applicants before they are hired.

The clerk typist and the bookkeeper each have a separate job description for their positions. In the event of an excess work load in one of those positions, it is Jenkins' responsibility to rebalance the work by reassigning it and she has discretion to do so despite the fact that the reassigned work may fall outside the scope of an employee's job description. Jenkins' job description and her position analysis indicates that she must consider which tasks blend well with a particular employee in making such reassignments.

#### ANALYSIS:

Section 2(11) of the Act defines a supervisor as a person:

... having the authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In *Entergy Systems & Services*, 328 NLRB No. 125 (1999), the Board held that the authority involved in any of the functions enumerated in Section 2(11) of the Act must be in the interest of the employer and require the use of independent judgment. Although the statutory

language is to be read in the disjunctive, the exercise of the statutory authority must be exercised using independent judgment and the party asserting supervisory status bears the burden of proof establishing such status.

The evidence here establishes that Jenkins has authority to independently hire employees on behalf of and in the interest of the Employer. Moreover, Jenkins must evaluate applicants' qualifications and suitability for hire, which requires the use of independent judgment. The record further shows that Jenkins exercises independent judgment in prioritizing and reassigning work based on which assignments will blend well with each employee. Inasmuch as Jenkins exercises independent judgment in the interest of the Employer in hiring and responsibly directing and assigning employees, I find that she is a supervisor within the meaning of Section 2(11) of the Act and I shall exclude her from the unit. <sup>5/</sup>

The Petitioner's reliance on *North Shore Weeklies*, 317 NLRB 1128, 1130 (1995) in support of its contention that Jenkins is not a supervisor is misplaced. In *North Shore*, unlike the case at bar, the Board at footnote 1 specifically noted that the disputed supervisors did not have any role in interviewing job applicants and did not participate in hiring applicants not personally known to them.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

**All office clerical employees and full-time instructors employed by the Employer at its Medway, Ohio facility, but excluding all part-time instructors, all other employees and all professional employees, guards and supervisors as defined in the Act.**

Accordingly, I shall direct an election among the employees in such unit.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Section 103.20 of the Board's Rules and Regulations requires that the Employer shall post copies of the Board's official notice of election in conspicuous places at least three full working days prior to 12:01 a.m. on the day of the election. The term "working day" shall mean an entire 24 hour period excluding Saturdays, Sundays and holidays. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months

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<sup>5/</sup> Because the indicia discussed are sufficient to establish that Jenkins is a supervisor, I need not pass on other evidence in the record indicating that Jenkins is involved in communicating with employees concerning deficiencies in their behavior or work performance or her recommending wage increases. Moreover, I need not decide whether Jenkins is a confidential employee who would be excluded from the unit on that basis.

before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Electrical Workers, Local Union 648, AFL-CIO-CLC.**

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **December 14, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 21, 2000**.

Dated at Cincinnati, Ohio this 7<sup>th</sup> day of December 2000.

*/s/ Richard L. Ahearn*

Richard L. Ahearn, Regional Director  
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